1109

SUPREME COURT OF THE UNITED STATES.

No. 144.

HIRAM BARBER, APPELLANT,

vs.

HULDAH A. BARBER, BY HER NEXT FRIEND, GEORGE CRONKHITE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

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GIDEON, Print.

UNITED STATES OF AMERICA,
District of Wisconsin, ss.

District Court of the United States of America for the district of Wisconsin.

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held, according to law, on the first Monday of January, in the year of our Lord one thousand eight hundred and fifty-seven. Present, the Honorable Andrew G. Miller, judge of said court, presiding; Stephen V. R. Ableman, marshal; John L. Hathaway, clerk.

Among other were the following proceedings, to wit:

HULDAH A. BARBER,
By her next friend, George Cronkhite,
vs.
HIRAM BARBER.

Be it remembered, that heretofore, to wit, on the twenty-seventh day of January, in the year of our Lord one thousand eight hundred and fifty-five, the said Huldah A. Barber, by her next friend, George Cronkhite, by Messrs. Brown & Ogden, her solicitors, filed her bill against Hiram Barber, in the words and of the tenor following, to wit:

District Court of the United States for the district of Wisconsin—
In chancery.

To the Judge of the District Court of the United States for the district of Wisconsin:

Huldah A. Barber, of the State of New York, and a citizen of the State of New York, by George Cronkhite, her next friend, also of said State, and a citizen of said State, brings this her bill against Hiram Barber, of Dodge county, in the State of Wisconsin, and a citizen of the State of Wisconsin.

And thereupon your oratrix complains and says, that heretofore, to wit, on or about the first day of July, A. D. 1844, she being the wife of the said defendant, did exhibit (by George Cronkhite, her next friend) her bill of complaint against the defendant in the court of chancery for the fourth district, of the State of New York, before the Honorable Reuben H. Walworth, chancellor, for a divorce, (the said court having then and there jurisdiction over the said defendant, and over the subject-matter in the premises;) and that thereupon such proceedings were had; that on the 25th day of August, A. D. 1856, a decree was pronounced by said court, by

which, among other things, it was ordered, adjudged and decreed, that your oratrix and the said defendant should be separated from bed and board forever, as by a copy of said decree hereunto annexed, marked (A), and made a part of this bill, will more fully and at large appear.

And your oratrix further shows that afterwards, to wit, on the 30th day of April, A. D. 1847, the said court (John Willard, vice chancellor of said circuit, presiding) then and there having full jurisdiction in the premises, made a further and final decree in said cause, by which, among other things, it ordered, adjudged and decreed, that the said defendant should pay to your oratrix for her support and maintenance three hundred and sixty dollars a year, in quarterly payments, from the first day of June, A. D. 1844, during the life of your oratrix, as and for her permanent alimony; and that the sum of nine hundred and sixty dollars, being said permanent alimony retrospectively (at that time), be paid forthwith as aforesaid, and that your oratrix should have execution therefor, and that the said permanent alimony thereby allowed and decreed to your oratrix, and to grow due after the first day of March, A. D. 1847, to which day said alimony was computed as above, should be paid by said defendant to your oratrix, in quarterly payments, on the first days of June, September, and December then next following, and also on the first days of March, June, September, and December of each year thereafter, during the life of your oratrix; and in case the same should not be punctually paid on each of these days, that the said defendant should pay interest thereon from the time when each quarterly payment should become due respectively, and that your oratrix should have execution therefor toties quoties; and that said permanent alimony allowed to your oratrix should be vested in her for her own separate use and for her own separate estate, with full power to invest the same with such trustee or trustees as she might think proper to appoint, and to dispose of the same, by will or otherwise, from time to time during her life, or at her death, or either, as she might think proper, free from the control, claim, or interposition of the said defendant; and thereupon the costs of your oratrix were taxed at two hundred and twenty-two dollars and fifty cents, as by her reference to said proceedings and the record thereof (a certified copy of which is here ready to be produced as this honorable court shall direct) will more fully and at large appear.

And your oratrix further shows, that the said defendant has not paid either of said sums of money so adjudged to your oratrix as aforesaid, or any part thereof; and that the said sum of nine hundred and sixty dollars, and the said costs, and the said several amounts alimony which have accrued for the several quarters since the date of said decree, amounting together to the sum of four thou-

sand two hundred and forty-two dollars and fifteen cents, and also interest as aforesaid, are now due and unpaid to your oratrix.

And your oratrix further shows, that the legal interest in the State of New York is seven per cent., and that she is entitled to the same upon the said sums from the time they were severally payable, according to the terms of said final decree.

And your oratrix further shows, that on or about the month of May, A. D. 1847, she brought a suit at law, by the said George Cronkhite, her next friend, in the district court of the United States for the county of Milwaukee, in the Territory of Wisconsin, to recover of the said defendant the amount then due to your oratrix, by virtue of said decree, and filed a declaration in said cause, to which the said defendant demurred for the reason, among others, that the remedy of your oratrix was not at law; upon which demurrer judgment was afterwards rendered by the circuit court for Milwaukee county, in the State of Wisconsin, against your oratrix, for the reason aforesaid, upon which judgment a writ of error was sued out to the supreme court of said State, and the said judgment was affirmed, and the said supreme court then and there adjudged and determined that the remedy of your oratrix was in a court of chancery, and not at law, to wit, on or about the month of June, A. D. 1849. To the end, therefore, that the said defendant may, if he can, show why your oratrix should not have the relief hereby prayed, and may, upon his corporal oath, according to the best and utmost of his knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to all and singular the premises; and that, on the final hearing of this bill, the said defendant may be directed and decreed to pay to your oratrix the entire sum now due to her, by virtue of said decree, and also her costs in this suit most wrongfully sustained; and for such other or further relief in the premises as may be agreeable to equity and good conscience; may it please your honor, the premises consider to grant unto your oratrix the writ of subpœna issuing out of and under the seal of this honorable court, directed to the said Hiram Barber, and therein and thereby commanding him to appear before this court at a certain time, and under a certain penalty therein to be specified, and then and there to stand, to perform, and abide by such order, direction, and decree in the premises as to your honor may seem meet, &c.

BROWN & OGDEN,
Solicitors and of Counsel for Complainant.

Schedule "A."

At a court of chancery, held for the State of New York, at Saratoga Springs, on the twenty-fifth day of August, one thousand eight hundred and forty-six. Present, John Willard, vice chancellor of the fourth circuit.

HULDAH ADELINE BARBER,
By George Cronkhite, her next friend,
vs.
HIRAM BARBER.

This cause having been brought on to be heard upon the pleadings and proofs, and after hearing Mr. Hay, of counsel for the complainant, and Mr. Rosekrans, of counsel for the defendant, and the court having duly considered the pleadings, proofs, and arguments, and it appearing to this court that the defendant has been guilty of cruel and inhuman treatment of the complainant, and of such conduct towards her as to render it unsafe and improper for her to cohabit with him; and that he has abandoned her, and neglected and refused to provide for her; it is therefore ordered, adjudged, and decreed, and this court by virtue of its power and authority, and of the statute in such case made and provided, doth order, adjudge, and decree, that the said complainant and defendant be separated from bed and board forever: provided, however, that the said parties may at any time hereafter, by their joint petition, apply to this court to have this decree modified or discharged, and that neither of the said parties shall be at liberty to marry any other person during the lifetime of the other party. And it is further ordered and decreed that it be referred to one of the masters of this court residing in the county of Warren, to ascertain and report with all convenient speed what sum or sums should be allowed and paid by the defendant, or out of his estate, to the said complainant for her suitable support and maintenance, and that in taking such reference the master be at liberty to look into the pleadings and proofs in this cause, and to take such further proofs as may be deemed material. And it is further ordered, adjudged, and decreed, that the said complainant recover against the said defendant her costs and charges to be taxed, and that she have execution thereof.

Whereupon a subpœna issued as follows:

Subpœna.

UNITED STATES OF AMERICA,
District of Wisconsin, ss.

The President of the United States of America to Hiram Barber, greeting:

You are hereby commanded that you personally appear before the judge of the district court of the United States of America, for the district of Wisconsin, in our court of chancery, in and for the district aforesaid, on the first Monday of March next ensuing, at Milwaukee, to answer to a bill of complaint exhibited against you in our said court by Huldah A. Barber, by her next friend George Cronkhite; and to do further, and receive what our said court shall have considered in that behalf; and this you are not to omit under

the penalty which may ensue. This process of subpœna is directed to the marshal of this district, who is hereby commanded to serve the same upon the said Hiram Barber, if to be found in his district, and due return thereof make.

Witness the honorable Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin, at the city of Milwaukee, in the said district, this 27th day of January, in the year of our Lord one thousand eight hundred and fifty-five, and of our independence the seventy-ninth.

B. K. MILLER,
Clerk.

BROWN & OGDEN,
Solicitors.

It is ordered by our said court that the said Hiram Barber, the defendant aforesaid, do enter his appearance in this suit in the clerk's office on or before the day and time at which this subpœna is returnable as aforesaid, otherwise the bill filed may be taken as confessed.

And afterwards, to wit, on or before the return of said writ, came the said marshal, and returned said writ, with his return of service endorsed thereon, as follows:

Return.

Personally served the within subpœna on the within named defendant, Hiram Barber, by showing him the original, and delivering to him a copy, this 20th day of February, 1855.

STEPHEN V. R. ABLEVMAN,
U. S. Marshal.
By M. L. SAYLES, *Deputy.*

Fees $10 30.

And afterwards, to wit, on the fifth day of March, A. D. 1855, came the defendant by his solicitor, Mr. Billinghurst, and filed his demurrer, as follows:

Demurrer.

District Court of the United States for the district of Wisconsin.

The demurrer of Hiram Barber, defendant, to the bill of complaint of Huldah A. Barber, by her next friend, George Cronkhite, complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true, in such manner and form as the same are therein set forth and alleged, doth demur thereto; and for cause of demurrer

showeth: That the case stated in said bill of complaint doth not come within the description of cases in which this court will assume the power of decision. It is not such a case as is within the ordinary scope of a court of equity; the complainant can have relief in equity only in the court of chancery of the State of New York. It does not appear by the bill that the complainant has exhausted her remedy in the court of chancery of the State of New York—the complainant's relief is at law. The complainant hath not, in and by her said bill, made and stated such a case as doth or ought to entitle her to any such relief as is thereby sought and prayed for from or against this defendant; wherefore this defendant demands the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill, or any of the matters and things therein contained, and prays to be hence dismissed, with his reasonable costs in this behalf sustained.

C. BILLINGHURST,
Solicitor for Defendant.

A. FINCH, Jr.,
Of counsel.

I hereby certify, that in my opinion the foregoing demurrer is well founded in point of law.

A. FINCH, Jr.,
Of counsel.

STATE OF WISCONSIN,
County of Dodge, ss.

Hiram Barber, defendant above named, being duly sworn, says that the foregoing demurrer is not interposed for delay.

HIRAM BARBER.

Sworn this 28th day of February, A. D. 1855, before me.

S. BAIRD, [SEAL.]
Notary Public, Wisconsin.

And afterwards, to wit, on the first Monday (being the second day) of April, A. D. 1855, and being a rule day of said court, came the said complainant by her solicitors, and entered in the order and rule book an order, as follows:

Demurrer set down for Argument.

HULDAH A. BARBER
vs.
HIRAM BARBER. } In Chancery.

First Monday of April.

On motion of Brown & Ogden, solicitors for the complainant, it is ordered, that the demurrer filed in the above entitled cause be,

and the same is hereby, set down for hearing on this day, or as soon thereafter as it can be heard.

BROWN & OGDEN,
Solicitors for Complainant.

And afterwards, to wit, at a stated term of said court, begun and held at Madison, the seat of government of the State of Wisconsin, on the first Monday (being the second day) of July, A. D. 1855.

On the ninth day of said term, to wit, on the eleventh day of July, A. D. 1855, the following proceedings were had, to wit:

Demurrer Argued.

HULDAH A. BARBER,
By her next friend, George Cronkhite,
vs.
HIRAM BARBER.
} In Equity.

This day the demurrer of the defendant to the complainant's bill of complaint came on to be heard, and was argued by Mr. Truesdale for the defendant, and by Mr. Brown for the complainant, and the court not being sufficiently advised of and concerning the same, took time to consider.

And afterwards, at a special term of said court, begun and held at Milwaukee, on the first Monday (being the fifth day) of November, A. D. 1855.

On the thirteenth day of said term, to wit, on the nineteenth day of November, A. D. 1855, the following proceedings were had, to wit:

Demurrer overruled and Order to answer.

HULDAH A. BARBER,
By her next friend, George Cronkhite,
vs.
HIRAM BARBER.
} In Equity.

This day came the parties, by their counsel, and the demurrer of the defendant to the complainant's bill of complaint having been argued; on consideration whereof, it is ordered by the court, that the said demurrer be, and hereby is, overruled, and that the defendant answer said bill by the first Monday of January next, or the said bill will be taken as confessed.

And afterwards, to wit, on the fifth day of January, A. D. 1856, came the defendant, by his solicitor, and filed his answer.

showeth: That the case stated in said bill of complaint doth not come within the description of cases in which this court will assume the power of decision. It is not such a case as is within the ordinary scope of a court of equity; the complainant can have relief in equity only in the court of chancery of the State of New York. It does not appear by the bill that the complainant has exhausted her remedy in the court of chancery of the State of New York—the complainant's relief is at law. The complainant hath not, in and by her said bill, made and stated such a case as doth or ought to entitle her to any such relief as is thereby sought and prayed for from or against this defendant; wherefore this defendant demands the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill, or any of the matters and things therein contained, and prays to be hence dismissed, with his reasonable costs in this behalf sustained.

C. BILLINGHURST,
Solicitor for Defendant.

A. FINCH, Jr.,
Of counsel.

I hereby certify, that in my opinion the foregoing demurrer is well founded in point of law.

A. FINCH, Jr.,
Of counsel.

STATE OF WISCONSIN,
County of Dodge, ss.

Hiram Barber, defendant above named, being duly sworn, says that the foregoing demurrer is not interposed for delay.

HIRAM BARBER.

Sworn this 28th day of February, A. D. 1855, before me.

S. BAIRD, [SEAL.]
Notary Public, Wisconsin.

And afterwards, to wit, on the first Monday (being the second day) of April, A. D. 1855, and being a rule day of said court, came the said complainant by her solicitors, and entered in the order and rule book an order, as follows:

Demurrer set down for Argument.

HULDAH A. BARBER
vs.
HIRAM BARBER. } In Chancery.

First Monday of April.

On motion of Brown & Ogden, solicitors for the complainant, it is ordered, that the demurrer filed in the above entitled cause be,

and the same is hereby, set down for hearing on this day, or as soon thereafter as it can be heard.

BROWN & OGDEN,
Solicitors for Complainant.

And afterwards, to wit, at a stated term of said court, begun and held at Madison, the seat of government of the State of Wisconsin, on the first Monday (being the second day) of July, A. D. 1855.

On the ninth day of said term, to wit, on the eleventh day of July, A. D. 1855, the following proceedings were had, to wit:

Demurrer Argued.

HULDAH A. BARBER,
By her next friend, George Cronkhite,
vs.
HIRAM BARBER.
} In Equity.

This day the demurrer of the defendant to the complainant's bill of complaint came on to be heard, and was argued by Mr. Truesdale for the defendant, and by Mr. Brown for the complainant, and the court not being sufficiently advised of and concerning the same, took time to consider.

And afterwards, at a special term of said court, begun and held at Milwaukee, on the first Monday (being the fifth day) of November, A. D. 1855.

On the thirteenth day of said term, to wit, on the nineteenth day of November, A. D. 1855, the following proceedings were had, to wit:

Demurrer overruled and Order to answer.

HULDAH A. BARBER,
By her next friend, George Cronkhite,
vs.
HIRAM BARBER.
} In Equity.

This day came the parties, by their counsel, and the demurrer of the defendant to the complainant's bill of complaint having been argued; on consideration whereof, it is ordered by the court, that the said demurrer be, and hereby is, overruled, and that the defendant answer said bill by the first Monday of January next, or the said bill will be taken as confessed.

And afterwards, to wit, on the fifth day of January, A. D. 1856, came the defendant, by his solicitor, and filed his answer.

Answer.

United States District Court for the district of Wisconsin.

In Equity.

The answer of Hiram Barker, defendant to the bill of complaint of Huldah A. Barber, by her next friend, George Cronkhite, complainant.

This defendant now and at all times hereafter, saving and reserving to himself all and all manner of benefit of exception to the many errors and insufficiencies in the said complainant's bill of complaint, for answer thereunto, or unto so much thereof as he is advised by counsel is material for him to make answer thereunto, answering, says, that he admits the filing of the bill by the complainant in the State of New York, in the fourth district, before the chancellor of the State of New York, the proceedings therein which resulted in a decree of separation from bed and board at the time, and as in said bill of complaint alleged. And he also admits the subsequent proceedings in said court, and the decree that this defendant should pay the alimony or support and maintenance money to the extent at the time and times as in said bill of complaint alleged. And he further admits, that he has not paid either or any, or any part of the sum or sums of money so decreed by the court of chancery of the State of New York, that he should pay. And he further admits, that he was sued at law in the district court of the United States for county of Milwaukee, upon said decree from New York, and that he demurred thereto, and that said court sustained said demurrer, and that a writ of error was sued out upon that judgment, and that the supreme court of the State of Wisconsin affirmed the judgment below. But he denies that the said supreme court adjudged and determined that the remedy of the complainant was in a court of chancery.

And this defendant, further answering, says that he is now and has been for more than twenty years last past the owner in fee of real estate in the county of Warren, in the State of New York, which is the same county in which the said complainant lived with this defendant, after her marriage to this defendant, which said real estate is, and has been ever since the said complainant filed her bill of complaint aforesaid, in the State of New York, for a decree of separation from bed and board.

And this defendant is informed, and verily believes, that no execution has been issued, or other proceedings had to enforce said decree of the said complainant for alimony and support, and maintenance money, in the State of New York, and he claims the same benefit of these facts as if he had demurred to said bill of complaint therefor.

And this defendant, further answering, says, that on the nineteenth day of April, A. D. 1852, he filed his bill of complaint in the circuit court, in and for the county of Dodge, in the State of Wisconsin, sitting in equity, against the said Huldah A. Barber, she then being the wife of this defendant, to obtain by a decree of said court a dissolution of the marriage contract between the said complainant and this defendant, (the said court having jurisdiction over the parties, and the subject-matter in the premises,) and that thereupon such proceedings were duly had according to the statute, and the rules and practice of said court; that on the seventh day of February, A. D. 1853, it was by said court, the Honorable Charles H. Larrabee, circuit judge of the third judicial court, presiding, ordered, adjudged, and decreed, that the marriage contract between this defendant and the said Huldah A. Barber (the complainant in this suit) be dissolved, and the same was thereby dissolved accordingly, as by said decree, (a copy whereof is hereunto annexed, marked A,) and the proceedings now of record in the office of the clerk of the said circuit court of Dodge county, will more fully and at large appear, and to which this defendant prays leave to refer and prove on the hearing hereof, and he claims the same benefit of these facts as if he had plead the same.

And this defendant, further answering, says that he is advised, and believes, that the case made and presented by the complainant's said bill of complaint is not within the jurisdiction of this court; that the complainant being a feme sole, cannot come into court by a next friend, and that her remedy, if any, is in a court of law. And he submits to this court, and claims the benefit of these objections, upon the hearing hereof, without that any other matter or thing, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered unto, confessed, or avoided, traversed or denied, is true to the knowledge or belief of this defendant.

HIRAM BARBER.

C. BILLINGHURST,
Solicitor for Defendant.

STATE OF WISCONSIN, DODGE COUNTY, *ss.*

Hiram Barber, being duly sworn, deposes and says, that he has read the foregoing answer by him subscribed, and knows the contents thereof, and that all the several matters and things which are set forth in said answer, as from his information and belief, he believes to be true; and that all the several other matters and things therein set forth are true in substance and in fact.

HIRAM BARBER.

Subscribed and sworn before me, this 24th day of November, A. D. 1855.

CHARLES H. LARRABEE,
Circuit Judge.

A.

At a special term of the circuit court, sitting in chancery, held at Juneau, in and for the county of Dodge and State of Wisconsin, on the 20th day of January, A. D. 1855. Present, the Hon. Charles H. Larrabee, judge of the 3d judicial circuit of said State; John B. Ribble, clerk.

HIRAM BARBER
vs.
HULDAH ADELINE BARBER.

This cause came on to be heard at this term, upon the bill taken as confessed herein, and upon proofs on the part of the complainant, and was argued by counsel thereupon. Upon consideration thereof it was ordered, adjudged and decreed as follows, viz: That the marriage contract between the said complainant, Hiram Barber, and the said defendant, Huldah Adeline Barber, be dissolved, and the same is hereby dissolved accordingly; and the said parties are and each of them is freed from the obligations thereof, and it shall be lawful for each of said parties to marry again, in the same manner as though they had never been married; and that the complainant pay the costs herein.

By the court:

CHAS. H. LARRABEE.

February 7, 1853.

OFFICE OF THE CLERK OF THE COURT,
Dodge County.

I, Horace D. Patch, clerk of the circuit court in and for said county, do hereby certify that the foregoing is a true copy of the original decree entered in the above entitled cause, and the whole thereof.

Witness my hand and the seal of said court, at Juneau, this 15th day of October, A. D. 1855.

[SEAL.]

ARTHUR JACOBE,
Dp'y Cl'k, Cl'k abs.

And afterwards, to wit, on the tenth day of January, A. D. 1856, came the said complainant, by her solicitors, and filed her replication as follows, to wit:

Replication.

District Court of the United States for the district of Wisconsin.—
In chancery.

HULDAH BARBER, by her next friend,
vs.
HIRAM BARBER.

Before the Honorable Andrew G. Miller, judge, &c.

The replication of Huldah Barber, complainant, by her next friend, to the answer of Hiram Barber, defendant, to the bill of complaint of said complainant.

This complainant, now and at all times saving and reserving to herself all and all manner of benefit of exception to the manifold insufficiencies in said answer, for replication thereunto saith, that she will aver and prove her said bill to be true, certain and sufficient in the law to be answered unto by this repliant, without this, that any other matter or thing in said answer contained, material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct; and humbly prays as in and by her said bill she hath already prayed.

BROWN & OGDEN, *Sol'rs for Compl't.*

And on the part of the complainant, on the hearing of the said cause, the following was admitted in evidence:

Complainant's Testimony.

The people of the State of New York to all to whom these presents shall come, greeting:

Know ye, that we having caused the records and proceedings of our court of chancery, for the fourth circuit, to be inspected, do find there of record an enrolled decree in a certain cause, wherein Huldah Adeline Barber, by George Cronkhite, her next friend, is complainant, and Hiram Barber is defendant, and the pleadings and proceedings thereto annexed in the words and figures following:

At a court of chancery held for the State of New York at Saratoga Springs on the 30th day of June, one thousand eight hundred and forty-seven. Present, John Willard, vice chancellor of the fourth circuit.

HULDAH A. BARBER,
By George Cronkhite, her next friend,
vs.
HIRAM BARBER.

The bill of complaint in the above entitled cause, which is hereto annexed, was filed on the first day of July, 1844, and thereupon a subpœna issued.

On the second day of December, 1844, the defendant caused his appearance to be duly entered by Rosekrans & Farlin, his solicitors, and put in his answer to the said bill of complaint, which answer was filed on the 30th day of August, 1845, and is hereto annexed. On the 5th day of September, 1845, a replication was filed to said answer, which replication is also hereto annexed. Proofs having been taken, the cause was regularly brought to a hearing, and thereupon a decretal order of reference was entered as follows, viz:

At a court of chancery held for the State of New York, at Saratoga Springs, on the 25th day of August, one thousand eight hundred and forty-six. Present, John Willard, vice chancellor of the fourth circuit.

HULDAH ADELINE BARBER,
By George Cronkhite, her next friend,
vs.
HIRAM BARBER.

This cause having been brought on to be heard upon the pleadings and proofs, and after hearing Mr. Hay, of counsel for the complainants, and Mr. Rosekrans, of counsel for the defendant, and the court having duly considered the pleadings, proofs and arguments, and it appearing to this court that the defendant has been guilty of cruel and inhuman treatment of the complainant, and of such conduct towards her as to render it unsafe and improper for her to cohabit with him, and that he has abandoned her, and neglected and refused to provide for her; it is, therefore, ordered, adjudged and decreed, and this court, by virtue of its power and authority, and of the statute in such case made and provided, doth order, adjudge and decree, that the said complainant and defendant be separated from bed and board forever, provided, however, that the said parties may, at any time thereafter, by their joint petition, apply to this court to have this decree modified or discharged; and that neither of the said parties shall be at liberty to marry any other person during the lifetime of the other party.

And it is further ordered and decreed, that it be referred to one of the masters of this court, residing in the county of Warren, to ascertain and report, with all convenient speed, what sum or sums should be allowed and paid by the defendant, or out of his estate, to the said complainant for her suitable support and maintenance; that in taking such reference the master be at liberty to look into the pleadings and proofs in this cause, and to take such further proof as may be deemed material.

And it is further ordered, adjudged and decreed, that the said complainant recover against the said defendant her costs and charges to be taxed, and that she have execution thereof.

In pursuance of said decretal order the master's report, which is hereto annexed, was filed on the 26th day of November, 1846, and was duly confirmed.

Exceptions having been filed to said report, this cause was again regularly brought to a hearing, and on the thirtieth day of April, 1847, a final decree was entered therein as follows, viz:

At a court of chancery held for the State of New York at Saratoga Springs on the thirtieth day of April, one thousand eight hundred and forty-seven. Present, John Willard, vice chancellor of the fourth circuit.

HULDAH ADELINE BARBER,
By George Cronkhite, her next friend,
vs.
HIRAM BARBER.

The report of Halsey R. Wing, esquire, one of the masters of this court, having been filed, and the exceptions thereto on the part of the defendant having been read and filed, and after hearing counsel, as well on the part of the defendant as complainant, on motion of said next friend of said complainant, and their counsel, Wm. Hay, it is hereby ordered and adjudged, that the said exceptions be, and hereby are, overruled; and it is further ordered, that the report of the said master be, and the same is hereby, absolutely confirmed. And it appearing by said report that, for the suitable support and maintenance of the said complainant, Huldah Adeline Barber, there should be allowed and paid to her by the above named defendant, Hiram Barber, or out of his estate in quarterly instalments, the annual sum of three hundred and sixty dollars in each and every year, which said report hath been duly confirmed; and it further appearing, that no ad interim alimony hath been paid in this behalf; thereupon, on hearing Mr. Wm. Hay, of counsel for complainant, and Mr. Rosekrans, of counsel for defendant, it is ordered, adjudged and decreed, and this court, by virtue of its power and authority and of the statute in such case provided, and in addition to and furtherance of the former decree of this court in the premises, doth order, adjudge and decree, that the said defendant pay to the said complainant, for her support and maintenance, three hundred and sixty dollars a year, in quarterly payments, from the first day of July, one thousand eight hundred and forty-four, (on which day the bill of complaint in this cause was filed,) during her life, as and for her permanent alimony.

And it is further ordered, adjudged and decreed, that the sum of nine hundred and sixty dollars, being said permanent alimony retrospectively, be paid forthwith as aforesaid, and that the said complainant have execution therefor. And it is further ordered, adjudged and decreed, that the permanent alimony hereby allowed and decreed to the said complainant, and to grow due after the first day of March, one thousand eight hundred and forty-seven, to which day said alimony is above computed, be paid by the said de-

fendant to the said complainant, in quarterly payments, on the first days of June, September and December next, and also on the first days of March, June, September and December in each year thereafter during her life; and in case the same shall not be punctually paid on each of those days, that the said defendant pay interest thereon from the time when such quarterly payments respectively become due, and that the said complainant may have execution therefor toties quoties.

And it is further ordered, adjudged and decreed, that the said permanent alimony, hereby allowed and decreed to the said complainant, be, and the same is hereby declared to be, vested in her for her own separate use, and as of her own separate estate, with full power to invest the same in such trustee or trustees as she may think proper to appoint, and to dispose of the same by will or otherwise, from time to time, during her life or at her death, or either, as she may think proper, free from any control, claim or interposition of the said defendant. Thereupon, the costs of said complainant were taxed at two hundred and twenty-two dollars and fifteen cents, ($222 15.)

Whereupon, said bill and such other papers as are required by the rules of this court, together with said taxed bill of costs, are now attached together and are hereto annexed, and the said final decree is signed and enrolled, according to the form of the statute in such case made and provided, the day and year in the caption of this enrolment mentioned.

JOHN WILLARD, *V. C.*
G. M. *DARVISON, Clerk.*

[SEAL.]

All which we have caused by these presents to be exemplified, and the seal of our court of chancery to be hereunto affixed.

Witness Reuben H. Walworth, chancellor of our said State, at Saratoga Springs, this third day of July, one thousand eight hundred and forty-seven.

G. M. DAVIDSON,
Clerk in Chancery, 4th circuit.

STATE OF NEW YORK, *ss.*

I, Reuben H. Walworth, Chancellor of the State of New York, do hereby certify that the foregoing attestation is in due form of law; that the seal hereto affixed is the seal of the court of chancery, and that Gideon M. Davidson is the clerk of the said court for the fourth circuit of the State of New York, and that his name subscribed to the above attestation is in his proper handwriting. Given under my hand this third day of July, 1847.

R. HYDE WALWORTH,
Chancellor.

UNITED STATES OF AMERICA.

By John Young, Governor of the State of New York.

It is hereby certified that Reuben H. Walworth was, on the day of the date of the annexed certificate, chancellor of the State of New York, duly commissioned and sworn. That the signature, "R. Hyde Walworth," to the said certificate, is the proper handwriting of the said chancellor, and that full faith and credit may and ought to be given to his official acts.

In testimony whereof, the great seal of the State is hereunto affixed. Witness my hand at the city of Albany, the [SEAL.] fifteenth day of July, in the year of our Lord one thousand eight hundred and forty-seven.

JOHN YOUNG.

Passed the secretary's office the 15th day of July, 1847.

ARCH'D CAMPBELL,
Dep. Sec. of State.

And on the part of the defendant, on the hearing of said cause, the following was admitted as evidence:

Defendant's Testimony.

To the Circuit Court for the county of Dodge.—In Equity.

Your orator, Hiram Barber, of the town of Oak Grove, in the county of Dodge and State of Wisconsin, aged about fifty years, complaining, shows unto this court that he now is, and has been for more than five years, immediately preceding the exhibiting of this your orator's bill of complaint, a resident of the State of Wisconsin.

Your orator further shows that, on or about the 12th day of November, 1840, he was, in the State of New York, in fact lawfully married to his present wife, Huldah Adeline, the defendant in this suit, now aged about fifty years, and that your orator and the said Huldah Adeline immediately thereafter begun, and from that time until on or about the 20th day of November, A. D. 1842, continued to live and cohabit together as man and wife.

Your orator further shows that, on or about the 20th day of November, A. D. 1842, the said Huldah Adeline, in violation of her marriage vows and against the will and consent of your orator, wilfully deserted and abandoned your orator, his bed and board, and ever since that time has and still does neglect and refuse to live with your orator.

In tender consideration whereof, and forasmuch as your orator is remediless in the premises, at and by the strict rules of the common law, and is only relievable in a court of equity, where matters of this nature are properly cognizable and relievable: To the

end, therefore, that the said Huldah Adeline Barber may full, true, direct, and perfect answer make to all and singular the premises, and that as fully and particularly as if the same were here again repeated and she thereto particularly interrogated; and that the said marriage between your orator and the said Huldah Adeline Barber may be completely dissolved by a decree of this court, according to the statute in such case made and provided, and that your orator may have such further relief in the premises as shall be equitable, and the circumstances of this case may require:

May it please the court to grant unto your orator the writ of subpœna issuing out of and under the seal of this court, to be directed to the said Huldah Adeline Barber, commanding her, by a certain day and under a certain penalty therein to be inserted, to be and appear before this honorable court, and then and there to answer the premises, and further to stand to and abide such decree and order therein as shall be agreeable to equity and good conscience. And your orator shall ever pray, &c.

HIRAM BARBER.

BILLINGHURST & BAIRD,
Sol'rs for Compl't.
SAM'L BAIRD,
Of Counsel.

STATE OF WISCONSIN,
County of Dodge, ss.

On the 19th day of April, A. D. 1852, personally appeared before me Hiram Barber, and made oath that he had read the foregoing bill subscribed by him, and knew the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on his information and belief, and as to those matters he believes them to be true.

HENRY W. LANDER,
Notary Public.

Endorsed: Filed April 19, 1852.
H. W. LANDER, *Dep. Cl'k.*

Dodge Circuit Court.

HIRAM BARBER
vs.
HULDAH ADELINE BARBER. } In Equity.

STATE OF WISCONSIN,
County of Dodge, ss.

Hiram Barber, in said county, being duly sworn, says, that he is the complainant in the above entitled cause; that a subpœna to

appear and answer has been duly issued in said cause, directed to the said defendant, and placed in the hands of the sheriff of said county to be executed, more than ten days before the return day thereof; that said sheriff has returned said subpœna "not served" as to the said defendant. Deponent further says, that the said defendant is a non-resident of this State, and that she resides in Springville, in the county of Erie, and State of New York.

HIRAM BARBER.

Sworn before me this 3d day of May, A. D. 1852.

HENRY W. LANDER,
Notary Public.

(Endorsed:) Filed May 4th, 1852.

H. W. LANDER, *Dep. Cl'k.*

Dodge Circuit Court.

HIRAM BARBER
vs.
HULDAH ADELINE BARBER. } In Equity.

It satisfactorily appearing to the undersigned, that a subpœna to appear and answer has been duly issued in the above cause, and returned by the sheriff of Dodge county "not served" as to said defendant, and that said defendant is a non-resident of the State of Wisconsin, and that no appearance has been entered herein by the said defendant, on motion of Billinghurst and Baird, of counsel for complainant, ordered that the said defendant plead, answer or demur to the bill of complaint filed in this cause, on or before the 3d day of August next, or in default thereof said bill be taken as confessed.

Dated Juneau, May 2d, 1856.

S. L. ROSE,
County Judge of Dodge Co.

BILLINGHURST & BAIRD,
Complt's Sol'rs, Juneau.

(Endorsed:) Filed May 4, 1852.

H. W. LANDER, *Dep. Cl'k.*

STATE OF WISCONSIN,
Jefferson County, ss.

J. A. Hadley, of the village of Watertown, in the county and State aforesaid, being duly sworn, says that he is the publisher of the "Watertown Chronicle," a weekly newspaper published in said

county, and that a notice of which the annexed is a printed copy was published in said paper once in each week for six weeks in succession, commencing on the 12th day of May, A. D. 1852.

J. A. HADLEY.

Sworn before me this 17th day of June, 1852.

JAMES PRENTISS,
Notary Public.

(Copy annexed.)

Dodge Circuit Court.

HIRAM BARBER
vs.
HULDAH ADELINE BARBER. } In Equity.

It satisfactorily appearing to the undersigned, that a subpœna to appear and answer has been duly issued in the above cause, and returned by the sheriff of Dodge county "not found" as to said defendant, and that said defendant is a non-resident of the State of Wisconsin, and that no appearance has been entered herein by said defendant, on motion of Billinghurst and Baird, of counsel for complainant, ordered that the said defendant plead, answer or demur to the bill of complaint filed in this cause on or before the 3d day of August next, or in default thereof said bill will be taken as confessed.

Dated Juneau, May 2, 1852.

S. L. ROSE, *County Judge.*

BILLINGHURST & BAIRD,
Complainant's Sol'rs.

(Endorsed:) Filed August 5th, 1852.

Dodge Circuit Court, in equity.—Entered August 5th, 1852.

HIRAM BARBER
vs.
HULDAH ADELINE BARBER.

An order having been entered in the above entitled cause on the 2d day of May last past, requiring the defendant, Huldah Adeline Barber, to plead answer or demur to the complainant's bill of complaint, filed herein, on or before the 3d day of August inst.; and the said defendant having failed to comply with the requirements of said order, and the time limited in said order having expired, on motion of Billinghurst & Baird, solicitors for complainants, ordered that said bill of complaint be, and the same is hereby, taken as confessed by said defendant.

Signed October 13, 1855, for August 5, 1852.

By the court: CHARLES H. LARABEE.

At a special term of the circuit court sitting in chancery, held at Juneau, in and for the county of Dodge and State of Wisconsin, on the seventh day of February, A. D. 1853. Present, the honorable Charles H. Larabee, judge of the third judicial circuit of said State; John B. Ribble, clerk.

HIRAM BARBER
vs.
HULDAH ADELINE BARBER.

This cause came on to be heard at this term upon the bill taken as confessed herein, and upon proofs on the part of the complainant, and was argued by counsel; thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz: that the marriage contract between the said complainant, Hiram Barber, and the said defendant, Huldah Adeline Barber, be dissolved, and the same is hereby dissolved accordingly; and the said parties are, and each of them is, freed from the obligations thereof, and it shall be lawful for each of said parties to marry again, in the same manner as though they had never been married; and that the complainant pay the costs herein.

Feb. 7, 1853.

By the court: CHAS. H. LARABEE.

I, Horace D. Patch, clerk of the circuit court in and for the county of Dodge, in the State of Wisconsin, do hereby certify that I have carefully compared the foregoing with the original enrolled decree in my office, and that the same is a correct transcript therefrom, and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office, in Juneau, in said [SEAL.] county of Dodge, this fifteenth day of November, A. D. 1856.

H. D. PATCH, *Clerk.*
By PAUL JUNEAU,
Deputy Clerk.

And now, at this same term, on the seventeenth day thereof, to wit, on the fourth day of February, A. D. 1857, the following proceedings were had, to wit:

Hearing.

HULDAH A. BARBER,
By her next friend, George Cronkhite,
vs.
HIRAM BARBER. } In Equity.

This day this cause came on to be be heard on the bill, answer, replication, proofs, and exhibits, and was submitted to the court,

by the counsel for the parties, without argument. Whereupon it is ordered by the court that reference be made to a commissioner to ascertain and report the amount due this complainant.

And afterwards, to wit, on the twentieth day of said term, to wit, on the seventh day of February, A. D., 1857, the following proceedings were had, to wit:

HULDAH A. BARBER,
By her next friend, George Cronkhite,
vs.
HIRAM BARBER.
} In Equity.

This day came George S. West, esq., a commissioner of this court, to whom was referred the record and papers in this cause, and made report as follows:

Master's Report.

District Court of the United States of America for the district of Wisconsin.

(Chan. C., Page 338.)

HULDAH A. BARBER,
By her next friend, George Cronkhite,
vs.
HIRAM BARBER.
} In Equity.

To the Judge of the District Court of the United States of America for the district of Wisconsin.

In pursuance and by virtue of an order of this court made in the above cause, and bearing date the fourth day of February, in the year of our Lord one thousand eight hundred and fifty-seven, by which it was referred to me, being one of the commissioners of this court, to compute, ascertain, and report the amount due to the complainant for principal and interest on the decree mentioned and set forth in the bill of complaint filed in this cause, I do respectfully certify and report, that I have been accompanied by the counsel for the complainant, and have computed and ascertained the sum of five thousand nine hundred and thirty-six dollars and eighty cents ($5,936 80) to be the amount due the complainant in the cause on the said decree for all instalments of principal falling due thereon prior to the filing of the bill in this cause, and for interest up to and including the date of this my report. And I do further report, that I have computed and ascertained the amount of the instalments of principal falling due since the filing of said bill to be the sum of seven hundred and seventy-two dollars and ninety-two cents for principal and interest up to and including the date of this my report, amounting together to the sum of six thousand seven hundred and nine dollars and seventy-two cents ($6,709 72).

And I do further certify and report, that the schedule hereunto annexed, marked A, and making a part of this my report, contains a statement and account of the principal and interest moneys due to the complainant as aforesaid, the period of the computation of the interest and its rate; and to which, for greater certainty, I refer.

All which is respectfully submitted.

Milwaukee, Feb. 4, 1857.

GEO. S. WEST,
U. S. Commissioner.

Schedule A, referred to in the preceding Report.

Costs adjudged to complainant on decree before the vice chancellor of the fourth circuit court of the State of New York, dated April 30, 1857—amount		$222 15
Interest to Feb. 4, 1857 = 9 y. 9 m. 3 d., at 7 per cent		151 75
		373 90
Amount due April 30, 1847, as per said decree	$960 00	
Int. to Feb. 4, 1857 = 9 y. 9 m. 3, at 7 per cent	655 76	
		1,615 76
Instalments due 1st June, September, and Dec'r, 1847, each $90	270 00	
Int. from Sept'r 1st, 1847, to Feb. 4th, 1857 = 9 y. 5 m. 3 d., at 7 per cent	178 12	
		448 12
Instalments due 1 March, June, September, and Dec'r, 1848, each $90	360 00	
Int. from July 16, 1848 (average time on the several instalments), to Feb. 4, 1857 = 8 y. 6 m. 18 d	215 46	
		575 46
Instalments due 1 March, June, Sept'r, and Dec'r, 1849, each $90	360 00	
Int. from July 16, 1849 (average) = 7 y. 6 m. 18 d	190 26	
		550 26
Instalments due 1st March, June, Sept'r, and Dec'r, 1850, each $90	360 00	
Int. from July 16, 1850 (average) = 6 y. 6 m. 18 d	165 06	
		525 06
Instalments due 1st March, June, September, and December, 1851, each $90	360 00	

Int. from July 16, 1851 (average) = 5 y. 6 m. 18 d.	$139 86	
		$499 86
Instalments due 1st March, June, Sept'r, and Dec'r, 1852, each $90	360 00	
Int. from July 16, 1852 (average) = 4 y. 6 m. 18 d.	114 66	
		474 66
Instalments due 1st March, June, September, and December, 1853, each $90	360 00	
Int. from July 16, 1853 (average) = 3 y. 6 m. 18 d.	89 46	
		449 46
Instalments due 1st March, June, September, and Dec'r, 1854, each $90	360 00	
Int. from July 16, 1854 = 2 y. 6 m. 18 d.	64 26	
		424 26
Amount of instalments due at filing of bill, and interest to Feb. 4, 1857		5,936 80
Instalments becoming due after filing of bill, viz: due 1st March, June, Sept'r, and Dec'r, 1855, each $90	360 00	
Interest from July 16, 1855 = 1 y. 6 m. 18 d.	39 06	
	399 06	
Instalments due 1 March, June, Sept'r, and Dec'r, 1856, each $90 $360 00		
Int. from July 16, 1856 = 6 m. 18 d. 13 86		
	373 86	
Amount falling due after filing of bill		772 92
Amount due at the date of this report		$6,709 72

Milwaukee, Feb. 4, 1857.

GEO. S. WEST,
U. S. Commissioner Dt. of Wisconsin.

Decree.

This day this cause came on to be heard upon the bill, answer, replication, proofs, and exhibits, and the report of George S. West, esq., a master of this court, and was submitted to the court by the counsel of the parties without argument; whereupon, on consideration whereof, it is ordered, adjudged, and decreed by the court that the said report, that five thousand nine hundred and thirty-six dollars and eighty cents is due from the defendant to the com-

plainant for principal and interest to and prior to the time of filing the bill in this cause, be, and hereby is, confirmed.

And that the said defendant, Hiram Barber, pay to the said complainant, for her sole and separate support and maintenance, the said sum of five thousand nine hundred and thirty-six dollars and eighty cents, together with the costs to be taxed, within ten days, and in default thereof an execution be issued against him for the same.

A. G. MILLER.

Prayer for Appeal.

And came Hiram Barber, by his solicitor, and prayed an appeal to the Supreme Court of the United States. Whereupon it is ordered by the court, that an appeal be allowed, and that the defendant file a bond with approved surety, in the penalty of eleven thousand eight hundred and seventy-three dollars and sixty cents, conditioned to prosecute said appeal with effect, and to abide the final order of the said Supreme Court.

Agreement when to file Appeal Bond.

And afterwards, to wit, on the seventeenth day of May, A. D. 1857, came the said complainant, by her solicitors, and filed an agreement, as follows:

Dist. Court of the U. S. for the dist. of Wisconsin.

HULDAH BARBER,
By her next friend, George Cronkhite,
vs.
HIRAM BARBER.

It is stipulated in *conformity* with a prior verbal agreement, that the bond of Hiram Barber and sureties, as appellant in the above entitled cause, may be filed within two days from this date, with like effect as if filed within ten days from decree rendered.

BROWN & OGDEN,
Sol'rs for Compl't.

May 17th, A. D. 1857.

Appeal Bond.

And afterwards, to wit, on the eighteenth day of May, A. D. 1857, came the said defendants and filed their appeal bond, as follows:

SUPREME COURT OF THE UNITED STATES.

HULDAH A. BARBER,
By George Cronkhite, her next friend,
vs.
HIRAM BARBER.

Know all men by these presents, that we, Hiram Barker, Charles Billinghurst and Mortimer L. Sayles, are held and firmly unto the above named Huldah A. Barber, in the sum of eleven thousand eight hundred and seventy-three dollars and sixty cents, to be paid to the said Huldah A. Barber; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the seventeenth day of February, in the year of our Lord one thousand eight hundred and fifty-seven.

Whereas the above named Hiram Barber hath prosecuted an appeal to the Supreme Court of the United States, to reverse the decree rendered in the above entitled suit by the judge of the district court of the United States for the district of Wisconsin:

Now, therefore, the condition of this obligation is such, that if the above named Hiram Barber shall prosecute his said appeal to effect and answer all damages and costs if he shall fail to make his said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

HIRAM BARBER, [SEAL.]
M. L. SAYLES, [SEAL.]
C. BILLINGHURST. [SEAL.]

Sealed and delivered and taken and acknowledged, this 17th day of February, A. D. 1857, before me.

SAMUEL NOYES,
Clerk of Dodge County circuit court.

UNITED STATES OF AMERICA,
District of Wisconsin, ss.

Hiram Barber and Mortimer L. Sayles, each for himself, being duly sworn, deposes and says that he is worth the sum of eleven thousand eight hundred and seventy-three dollars and sixty cents, over and above all his just debts and liabilities.

HIRAM BARBER,
M. L. SAYES.

Sworn to this seventeenth day of February, A. D. 1857, before me.

SAMUEL NOYES,
Clerk Dodge Co. cir. court.

May 16, 1857. This bond is approved and appeal allowed.

A. G. MILLER, *Judge.*

The United States of America to Huldah A. Barber, by her next friend, George Cronkhite, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States of America, to be holden at the city of Washington on the first Monday of December next, pursuant to an appeal from a decree of the district court of the United States of America for the district of Wisconsin, wherein Hiram Barber is appellant and you are appellee, to show cause, if any there be, why the said decree should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 23d day of May, in the year of our Lord one thousand eight hundred and fifty-seven, and of our independence the eighty-first.

A. G. MILLER,
Judge of the District Court of the U. S.,
for the District of Wisconsin.

Served on Huldah A. Barber by showing the above citation and delivering a copy thereof to Thomas L. Ogden, of the firm of Brown & Ogden, her solicitors, this 29th day of May, A. D. 1857.

S. V. R. ABLEMAN, *Marshal.*
By GEO. COGSWELL, *Deputy.*

Fees, service.....	$2 00
Copy.....	20
Travel.....	06
	$2 26

DISTRICT OF WISCONSIN, *ss.*

George Cogswell, deputy marshal for said district, being duly sworn, says that he served the foregoing citation as above stated.

GEO. COGSWELL,
Deputy Marshal Dist. of Wisconsin.

Subscribed and sworn to before me, this 29th day of May, A. D. 1857.

JOHN M. MILLER,
U. S. Com'r Dist. of Wisconsin.

Certificate of Clerk.

UNITED STATES OF AMERICA,
District of Wisconsin, ss.

I, John M. Miller, clerk of the district court of the United States of America for the district of Wisconsin, do hereby certify the fore-